

<b>COMPLIANCE BOARD OPINION 98-9</b>
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December 14, 1998

*Ms. Donna Hathaway Beck*

*Ms. Linda J. Owens*

*Ms. Audrey H. Gleski*

The Open Meetings Compliance Board has considered your complaint that the Maryland Open Meetings Act was violated by the Prince George's County Council, sitting as the District Council, in connection with a meeting on July 14, 1998. The Compliance Board has concluded that the Act was not violated.

**I**

**Summary of Complaint and Response**

The gist of your complaint concerns the adequacy of public notice of the July 14, 1998, meeting of the County Council. Prior to that meeting, the Council issued a notice of the meeting. The notice included an agenda, indicating the items that would be taken up by the Council at various times during the day. None of the items listed for the morning concerned zoning, an activity that the County Council carries out in its capacity as District Council for the portion of the Regional District that lies within Prince George's County. See Article 28, §8-101(a) of the Maryland Code. Under the entry for "1:00 p.m.," the agenda listed various "District Council items." The item of interest to you, concerning the Villages of Belmont, Inc. property (CDP-9706), was not on the agenda.<sup>1</sup> Your complaint alleged that "no notice [was] given that the District Council would be meeting on the morning of July 14." In fact, the Belmont matter was taken up by the Council that morning.

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<sup>1</sup> For ease of reference, this opinion will refer to Item CDP-9706 as the "Belmont matter."

In a timely response on behalf of the Council,<sup>2</sup> Mr. David L. Goode, the Council Administrator, acknowledged that the Act applied to the meeting in question, that the published agenda did not include a reference to the Belmont matter, and that the matter was considered by the Council on the morning of July 14. Mr. Goode contended, however, that the Act was not violated. As he explained the situation, the Belmont matter was added to the agenda at the request of one council member when the Council met on the morning of July 14. This addition to the agenda was apparently thought by a majority of the Council to be necessary to provide a timely response to a request from the developer's lawyer. The addition to the agenda was made in accordance with the Council's rules, Mr. Goode stated, and the Council's discussion of the matter was open to members of the public.<sup>3</sup>

## II

### Legal Analysis

The notice provision of the Open Meetings Act, §10-506 of the State Government Article, requires that written notice "include the date, time, and place of the session." The first question is whether the Council violated the Act by failing to provide accurate notice of the "time" at which it met on July 14 as the District Council. That is, if a public body gives notice that it will meet at a given time and then changes the time of the meeting, it must provide the public with an amended notice, stating the new time. Here, the notice indicated that District Council items would be considered in the afternoon, and the Council evidently gave no advance notice that it would act in its District Council role in the morning.

Nevertheless, in our opinion, the Prince George's County Council is but one public body for Open Meetings Act purposes. It is not a separate public body when it acts as the District Council and, therefore, need not give a separate notice for its District Council activities. Court decisions concerning the duties of a District Council make clear that the one and only public body involved in carrying out those duties is the County Council. *Montgomery County v. Revere Nat'l Corp.*, 341 Md. 355, 384, 671 A.2d 1 (1996); *Pan American Health Org. v. Montgomery County*, 338 Md. 214, 217, 657 A.2d 1163 (1995).

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<sup>2</sup> The Compliance Board granted the Council's request for a brief extension of its time to submit a response to the complaint. Subsequently, the Compliance Board received two additional submissions by the complainants and one supplemental response by the Council.

<sup>3</sup> The substantive and procedural zoning issues concerning the Belmont matter are immaterial to this Open Meetings Act complaint. Nor does the Compliance Board have jurisdiction to consider whether the addition of the Belmont matter to the agenda comported with the Council's own rules.

As long as the Council accurately informs the public of the date, time, and place of its meetings, which it did for its July 14 meeting, it is allowed by the Act to perform any of its duties, including District Council activities, at any announced session.

Your complaint also raises the question whether a public body's discussion of a previously unannounced agenda item violates the Act. As we have pointed out before, the General Assembly has not seen fit to require that notice of a meeting disclose the anticipated agenda. See Compliance Board Opinions No. 95-1 (April 13, 1995), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 110, and 92-5 (December 22, 1992), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 16. When a public body includes an agenda as part of its notice, as the County Council does, the inclusion of that additional information is praiseworthy, but it is not required by the Act. Therefore, the Council would have been in compliance with the notice provision of the Act if it had merely noted that it would conduct morning and afternoon sessions on July 14. Had the Council done so, those who were interested in the Belmont matter or any other particular item would not have known from the notice whether the item would have been taken up at the morning session, the afternoon session, or not at all. Yet, this dearth of information would not have violated the Act.

The Compliance Board will not deem it a violation of the Act if a public body voluntarily provides agenda item information as part of its notice but then changes the sequence of items or adds or deletes items. Were we to do so, we would be expanding a public body's notice obligations without any basis in the statutory text. Moreover, as a policy matter, although insisting on a public body's adherence to a published agenda might be thought to promote the right of citizens to observe the workings of government, the practical effect might well be to discourage public bodies from voluntarily providing this additional information.

### **III**

#### **Conclusion**

The omission of the Belmont matter from the published agenda for the July 14 meeting accurately reflected the agenda at the time that the notice was prepared, and nothing in the Act prohibits the Council from adding an item to its agenda at the last minute.

Accordingly, the Compliance Board finds that the Prince George's County Council did not violate the Open Meetings Act in connection its meeting on July 14, 1998.<sup>4</sup>

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.

Courtney McKeldin

Tyler G. Webb

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<sup>4</sup> Your complaint also alludes to an error in the Council's minutes, which you indicated state that the District Council's consideration of the Belmont matter took place in the afternoon, rather than in the morning as actually occurred. According to Mr. Goode, the "Actions Agenda" in which the error about time was made is an interim document not intended to serve as the minutes of the meeting. Assuming that the minutes, when prepared, accurately reflect the nature of the action taken during the morning session, the Council will have complied with the Act in this respect.